



Division Guideline #33

Date **Created: April 2, 2013**
 Reviewed: March 7, 2014

Title: **Priority of Need “Critical Service Situation” guidance**

Application: Regional Offices and TCM Providers

The overarching principle in identification of a Critical Service Situation is the inability of essential health and safety needs to be met by an individual’s environment when no other reasonable alternative is available. Examples include homelessness, the death or incapacity of the individual’s caregiver, or critical change in the medical/behavioral needs of the individual. The Division will also assign the highest priority to other specific situations based on legal obligations or interdivisional agreements.

Acceptance and recognition of a Critical Service Situation does not necessarily imply that the remedy proposed in the ISP must be accepted without modification. It is the goal of the Division to serve individuals in the least restrictive and most natural environment that can meet essential needs.

The following is intended to provide guidance for answering and verifying the items included on the Critical Service Situation portion of the PON

a. Young adult aging out of Lopez or Autism waiver and needs the same level of care to maintain well being.

Individuals age out of the MOCDDS (Lopez) waiver at age 18, and out of the Autism Waiver at age 19. Individuals meet these criteria when they age out of the respective waiver but remain in need of the services provided under that waiver.

b. Olmstead Issue

Individuals have the right to receive services in the most integrated setting appropriate to their needs. In functional terms, this means that those persons transitioning out of habilitation centers and nursing homes have the highest priority in accessing waiver services.

Situations in which an individual has been placed in a nursing home in order to receive intensive, time limited (less than 6 month) nursing services do not qualify under this definition.

This definition also does not include individuals residing in psychiatric institutions or Residential Care Facilities.

c. Is the focus of a court order or imminent court order.

This item is meant to give priority to those individuals who are required, or will imminently be ordered by a court to receive habilitative services. It also applies in situations where an adult served by the Division is unable to stay in his or her natural home due to court action against his or her caregiver(s). This includes a court order that prohibits an individual from remaining in the same home as a caregiver. It does not apply to individuals who have or are about to have a court ordering them to non habilitative services, including mental health treatment, substance abuse treatment, etc. It also does not apply to situations where the subject of an order of protection is someone other than an individual in the current residence.

d. The person is under 18 and requires coordinated services through several agencies to avoid court action

The term “coordinated services through several agencies” refers to situations in which multiple governmental agencies (more than 2) meet to develop a plan of action and to define the respective responsibilities of each agency. The “court action” that this item attempts to avoid refers to Voluntary Placement Agreements.

Note: Residential placement of minors is typically funded through the DSS Children’s Division.

e. The person is in the care and custody of DSS Children’s Division, which has a formal agreement in place with a division regional office (when formal agreement is ending).

This item refers to situations where there is a signed Inter Departmental Agreement (IDA) between the Division of Developmental Disabilities and the DSS Children’s Division. These agreements end at age 21, or upon release by the court from state custody.

f. Requires immediate life-sustaining intervention to prevent an unplanned hospitalization or residential placement.

This item refers to situations where there is documentation that it is reasonable to conclude that the individual is at risk of serious physical harm or death in the absence of intervention. The term immediate does not preclude consideration of circumstances that will occur within 30 days of the assessment. Focus must be on the capacity of the individual’s environment to meet the basic health and safety needs of the individual (including homelessness or the lack of a caregiver). The explanation for this conclusion must be clearly and persuasively documented within the ISP.

If the current housing environment is not ideal, but continues to provide for the basic physical needs of the individual, or if alternative housing is available that could meet those needs, then Division-funded residential interventions would not be required.

This item would only apply if no other options, including standard Medicaid benefits, are available that would be reasonably expected to provide the appropriate level of services and/or supervision, and if there is a credible risk of death or serious injury in the absence of Waiver funded services. *This could include situations where the death or incapacity of the caregiver results in a need for immediate life-sustaining intervention.*

The term “Residential Placement” could include group homes, ISL’s, or nursing home placement.

This item could be used to prioritize ISP’s that included either Support or Comprehensive Waiver services, depending on the circumstances. Placement in an ISL or Host Home would be supportable only if there was documentation that this was the least restrictive environment, and that the alternative would be hospitalization.

Note: It is the practice of the Division to place individuals in the least restrictive environment that can safely meet the basic health needs of the individual, with particular preference to natural home settings over paid residential services whenever possible.

g. Person needs immediate services in order to protect self, another person(s) from immediate harm.

This item is meant to ensure prioritization in situations where the ISP has clearly and objectively documented that, in the absence of protective intervention funded by DD Medicaid Waiver, immediate harm will occur or has already occurred and is likely to reoccur. *Immediate harm" is defined as significant injury that would require medical treatment and which is imminent without protective intervention.*

There has been a pattern of significant harm, such as that requiring formal medical care, to the individual or other persons, and;

These behaviors have all been documented to have occurred within the last 6 months.

This definition does not apply to single, isolated incidents.

In cases of abuse and/or neglect, law enforcement, the Division of Health and Human Services, or the Department of Social Services are the appropriate sources of remedy.

Reference: 9CSR 45-2.017

This guideline will be reviewed and updated, if needed, within six months of issuance.